

2. The planned equipment would cause radio frequency interference with other existing or planned equipment, which cannot be reasonably prevented.

3. Existing or approved towers or facilities do not have space on which proposed equipment can be placed so it can function effectively and reasonably.

4. Other reasons make it impracticable to place the equipment proposed by the applicant on existing and approved towers or facilities.

Approval of a proposed antenna to share an existing tower or facility shall be conditioned upon the applicant's agreement to pay all costs of adapting an existing facility to a new shared use. These costs can include structural reinforcement, preventing transmission or receiver interference, additional site screening, and other changes required to accommodate shared use.

(e) Nonionizing Electromagnetic Radiation (NIER) Threshold - The applicant shall submit a safety analysis of the electromagnetic environment surrounding the proposed site. The safety analysis shall be prepared by a qualified electromagnetic engineering specialist, or health professional qualified to produce such analysis. The safety analysis must demonstrate that the nonionizing electromagnetic radiation (NIER) emanating from the antenna not exceed threshold levels (550 milliwatts per centimeter square). The analysis shall indicate the horizontal and radial distance from the NIER source to the nearest property line, the nearest residential structure, and the points on the property and off the property with the highest calculated NIER levels and their elevations above sea level. The study shall then provide the ambient NIER levels in the frequency range of the proposed source measured at the four points identified above. The calculated NIER level at any one of the four points listed above shall not exceed one-fourth of the threshold level.

(f) Setbacks - Antennas or sources of NIER situated in the Recreation District shall be setback from the nearest neighboring residential property by a distance not less than 1,200 feet. Antennas or sources of NIER situated in the LI district shall comply with the existing setbacks applicable to that zone. All related accessory facilities and structures, including but not limited to equipment sheds, parking areas, anchors, bases and pads shall comply with the existing setbacks and dimensional regulations established for accessory uses in the appropriate zone.

(g) Inspection - Towers over 100 feet in height shall be inspected annually by a licensed professional engineer, and a copy of the inspection report submitted to the Town Building Inspector indicating repairs made.

(h) Visibility - All towers and antennas shall be sited to have the least possible practical visual effect on the environment. Towers shall not be artificially lighted unless otherwise required by the Federal Aviation Administration or other federal, state or local authority. Towers shall be a galvanized finish, or painted grey above the surrounding treeline, and grey or green below the treeline.

(i) Screening - Where a Cellular Telephone Facility abuts residential or public property, the following vegetative screening shall be provided. One row of native evergreen shrubs or trees capable of forming a continuous hedge at least five feet in height within two years of planting shall be provided to effectively screen the tower base and accessory facilities. Additional screening may be required to screen portions of the tower from nearby residential property or important views.

5. Article V, Section 89-29 Light Industry District: LI

Amend Section 89-29 by adding the following:

- A. (6) Cellular Telephone Facility
- B. (1) Radio, television and other electronic transmission structures.

6. Article V, Section 89-20.1 Recreation District: R.

Amend Section 89-20.1 by adding the following:

- B. (3) Cellular Telephone Facility

7. Severability - Should any provision of this local law be declared unconstitutional or invalid by any court of competent jurisdiction, such declaration of unconstitutionality or invalidity shall not affect any other provisions of this local law which may be implemented without the invalid or unconstitutional provision.

8. Effective Date

This Local Law shall take effect immediately.

## **EXHIBIT 3**



TOWN OF GREENBURGH

Local Law No. / 1995

A local law imposing a one year moratorium on the placement, establishment or erection of any new antenna intended for commercial purposes, pursuant to New York Constitution Article 9 §1, Municipal Home Rule Law §10 and Town Law §264.

BE IT ENACTED by the Town Board of the Town of Greenburgh as follows:

1 I. Title

2 This Local Law shall be known as the "Temporary Moratorium on  
3 the Establishment of New Commercial Antenna."

4 II. Purpose and Intent

5 Pursuant to the statutory powers vested in the Town to  
6 regulate and control local land-use and, moreover, protect the  
7 health, safety and welfare of all residents within its borders, the  
8 Town Board hereby declares a temporary one year moratorium on the  
9 establishment, placement, construction, enlargement or erection of  
10 any new antenna intended for commercial purposes. The Town Board  
11 directs the Department of Community Development and Conservation,  
12 in coordination with the Town Attorney, to review the Town's  
13 current regulations governing antenna, survey land-use regulations  
14 of other municipalities and propose comprehensive amendments to the  
15 Greenburgh Town Zoning Code governing all antenna, commercial and  
16 residential, recognizing that antenna are highly visible structures  
17 whose appearance is frequently unaesthetic and whose use  
18 involuntarily exposes residents to unwanted electromagnetic radio  
19 frequency radiation. The Board is concerned that even if exposure  
20 to limited electromagnetic radio frequency radiation poses an  
21 "acceptable" health risk, the cumulative effect of involuntary  
22 exposure to multiple sources of electromagnetic radio frequency  
23 radiation is unknown and merits further review of the local Zoning  
24 Code before any new commercial antenna are erected or enlarged.

25 It is well known that there have been no long-term health  
26 studies regarding exposure to electromagnetic radio frequency  
27 emissions. Therefore, until a general consensus is achieved within  
28 the scientific community that there are no adverse health effects  
29 to long term exposure to electromagnetic radio frequency radiation,  
30 or amendments to the Town Zoning Code are drafted ensuring that the  
31 location of electromagnetic radio frequency radiation sources can  
32 be regulated so as to limit involuntary exposure to levels deemed  
33 generally "acceptable," the Town is obligated to exercise its  
34 police powers and declare this moratorium on the erection or  
35 enlargement of any new commercial antenna in the Town of

1 Greenburgh

2 III. Definitions

3 A. Commercial Antennas: Any device intended to transmit  
4 unit, relay or receive an electromagnetic signal using any portion  
5 of the radio frequency spectrum, including but not limited  
6 satellite dishes, monopoles, and cellular telephone antennas, where  
7 such signal is offered or used, directly or indirectly, as part  
8 of a business enterprise or profit making venture.

9 B. FCC: The Federal Communications Commission of the United  
10 States Government.

11 C. Greenburgh Zoning Code: Greenburgh Town Code Article 28

12 D. "Town": The Town of Greenburgh.

13  
14 IV. Findings

15 The Town Board has read numerous articles and studies  
16 regarding electromagnetic radio frequency radiation and discussed  
17 the issue at length. The Board acknowledges that the federal  
18 government has, by law and administrative regulation, largely, but  
19 not completely, preempted regulation of radio communications. The  
20 FCC expressly permits limited local regulation by municipalities  
21 however, where such regulation is "reasonable." The FCC has held  
22 that

23 state and local zoning regulation or other  
24 regulations that differentiate between  
25 satellite receive-only antennas and other  
26 types of antenna facilities are preempted  
27 where such regulations (a) have a reasonable  
28 and clearly defined health, safety, or  
29 aesthetic objective; and (b) do not operate to  
30 impose unreasonable limitations on, or  
31 prevent, reception of satellite delivered  
32 signals by receive-only antennas or to impose  
33 costs on the owners of such antennas that are  
34 reasonable in light of the purchase and  
35 installation cost of the equipment.

36 Regulation of satellite transmitting antennas  
37 is preempted in the same manner, except that  
38 state and local health and safety regulation  
39 is not preempted.

40 47 CFR 25.106 (emphasis added).

41 Given that regulation of antennas is not entirely preempted  
42 the Town seeks to impose reasonable regulations governing all types  
43 of antennas that will (1) minimize the visual impact of

1 structures; (2) restrict involuntary exposure to electromagnetic  
2 radio frequency radiation to the greatest extent possible; and (3)  
3 avoid an unreasonable burden on antenna users.

4 Antennae emit electromagnetic radio frequency radiation. The  
5 Town Board acknowledges that there is a widespread, good faith  
6 public perception that long term exposure to electromagnetic radio  
7 frequency may pose a health hazard, particularly in infants and  
8 young children. No scientific study of cells, individual human  
9 beings or the general population concludes with reasonable  
10 scientific certainty that long term exposure to electromagnetic  
11 radio frequency is safe. In short, there is a vacuum of  
12 information documenting the safety of exposure to electromagnetic  
13 radio frequency radiation and based on past experience residents  
14 and Town Board members do not have confidence that the absence of  
15 information is a sufficient basis to permit involuntary exposure to  
16 electromagnetic radio frequency radiation. The Board is of the  
17 opinion that perception alone may justify governmental action as  
18 recognized by the New York State Court of Appeals wherein the Court  
19 held that fear of a potential health risk from electromagnetic  
20 radiation, without any underlying empirical data or rational basis,  
21 was legally sufficient grounds for compensatory damages. Criscuola  
22 v. New York State Power Authority, 81 N.Y.2d 649, 602 N.Y.S.2d 588  
23 (1993). Given this sanction by the Court of Appeals, the Town  
24 Board feels justified in dignifying public concern over involuntary  
25 exposure to electromagnetic radio frequency radiation while  
26 investigating the issue further.

27 In addition, the Board is concerned about the proliferation of  
28 transmitting and receiving antennas in our area generally and our  
29 Town specifically. The Town cannot permit antenna installation to  
30 be unregulated or regulated by court challenge on a case-by-case  
31 basis, usurping whatever legitimate regulation the Town might  
32 reasonably impose. For example, recently a village within the Town  
33 was compelled to approve installation of a commercial radio  
34 antenna. In re Cellular Telephone Company v. Rosenberg, 581  
35 N.Y.S.2d 554, aff'd, 591 N.Y.S.2d 526 (2d Dept 1992), thereby  
36 negating reasonable land-use restrictions that might have  
37 ameliorated the structure.

38 Given lack of definitive credible scientific work indicating  
39 that exposure to electromagnetic radio frequency radiation is safe,  
40 and the demonstrated, good-faith perception by residents that  
41 exposure to such radio frequencies may adversely impact human  
42 health, the Board declares a moratorium on all new commercial  
43 antenna.

#### 44 V. Scope and Duration of Moratorium

45 A. This moratorium prohibits the installation, erection,  
46 construction, placement or enlargement of any new commercial  
47 antenna, or any commercial device capable of emitting,  
48 transmitting, relaying or receiving an electromagnetic radio  
49 frequency signal. This law shall not apply to police, fire or

1 other communications deemed essential for public health, safety and  
2 welfare or where an exception has been granted pursuant to  
3 paragraph VI, below.

4 B. This moratorium shall be in effect for a period of one  
5 year from the date of enactment and expire by its own terms unless  
6 renewed.

7 C. This moratorium shall apply to all zones and all real  
8 property within the Town of Greenburgh.

9 D. Pursuant to this moratorium, the Building Inspector,  
10 Planning Board and Zoning Board shall not entertain any new  
11 applications or grant any permits, variances or approvals  
12 authorizing the installation of any new commercial antenna.  
13 Existing applications are not affected by this moratorium.

#### 14 VI. Hardship/ Exceptions

15 A. Where an applicant can show that compliance with this  
16 moratorium would work an undue hardship or where public health,  
17 safety and welfare requires, an exception from the absolute  
18 prohibition of this law may be granted.

19 B. Any property owner affected by this Local Law may apply to  
20 the Town Board, in writing, for a variation from strict compliance  
21 with the term of this law. An applicant seeking an exemption must  
22 submit documentary evidence of the hardship or proof justifying the  
23 public interest to be served by a hardship exemption. For the  
24 purposes of this Local Law unnecessary hardship shall not include  
25 the mere delay in being permitted to make an application for a  
26 variance, special permit, site plan, wetlands permit, or  
27 subdivision application during the pendency of this Local Law.

28 C. Procedure. Upon submission of a written application to  
29 the Town Clerk by the property owner seeking a variation of this  
30 Local Law, the Town Board shall within thirty (30) days of receipt  
31 of said application schedule a public hearing on said application  
32 upon five (5) days written notice in the official newspaper of the  
33 Town. At said Public Hearing the property owner and any other  
34 parties wishing to present evidence with regard to the application  
35 shall have an opportunity to be heard, and the Town Board shall  
36 within fifteen (15) days of the close of said public hearing render  
37 a decision either granting or denying the application for a  
38 variation from the strict requirements of this Local Law. If the  
39 Town Board determines that a property owner will suffer an  
40 unnecessary hardship if this Local Law is strictly applied to a  
41 particular property, then the Town Board shall vary the application  
42 of this Local Law to the minimum extent necessary to provide the  
43 property owner relief from strict compliance with this Local Law.

44 D. Any party aggrieved by the determination of the Town Board  
45 on an application for a variation from the strict compliance with  
46 this Local Law may appeal said decision to the Supreme Court, State

1 of New York, Westchester County, pursuant to Article 78 of the  
2 Civil Practice Laws and Rules within thirty (30) days of the filing  
3 of said decision in the office of the Town Clerk.

#### 4 VII. Penalties for Noncompliance

5 A. Any person, firm, or corporation that shall construct,  
6 erect, enlarge, or install any commercial antenna in violation of  
7 the provisions of this Local Law or shall otherwise violate any of  
8 the provisions of this Local Law shall be subject to:

9 1. Such penalties as may otherwise be provided by the laws,  
10 rules, and regulations of the Town of Greenburgh for  
11 Zoning Code violations; and

12 2. Injunctive relief in favor of the Town of Greenburgh to  
13 cease any and all such actions which conflict with this  
14 Local Law and, if necessary, to remove any construction  
15 which may have taken place in violation of this Local  
16 Law.

#### 17 VIII. Validity, Savings and Severability

18 Should any section, paragraph, sentence or word of this law be  
19 declared void, invalid or unenforceable, for any reason, such  
20 decision shall not affect the remaining provisions which shall  
21 remain in full force and effect.

#### 22 IX. Superseding

23 Pursuant to New York Municipal Home Rule Law §22, the  
24 provisions of this law are intended to supersede any inconsistent  
25 provision of state or local law.

#### 26 X. Effective

27 This local law shall take effect immediately.



## **EXHIBIT 4**

LOCAL LAW NO. 1994  
of the  
TOWN OF EASTCHESTER

This local law shall be known as "Moratorium on Placement of Cellular Telephone Antennas".

BE IT ENACTED by the Town Board of the Town of Eastchester as follows:

1) This Local Law shall be known and cited as Moratorium on Placement of Cellular Telephone Antennas.

2) Purpose and Intent:

The Town Board is cognizant of the concern within the community of potential impacts to public health, safety and welfare of cellular telephone antennas. Antennas emit electromagnetic fields and there is a public perception that exposure to these fields at certain distances may adversely affect the health of individuals who are exposed. At the present time the Town of Eastchester has no specific regulations with respect to the placement of cellular telephone antennas.

It is the intent of this Local Law to provide for a moratorium on placement of such antennas so that the Town Board may have an opportunity to investigate the public perception of the effects of these antennas and the concomitant impact of any such perception on matters within the jurisdiction of the Town. In particular, the Town Board wants to consider the potential impact of such structures on property values in particular zoning districts and on the visual aesthetic character of the town, and to determine whether it is appropriate to adopt zoning changes with respect to cellular telephone antennas to protect these values. The Town Board recognizes that this is a highly regulated area which is largely pre-empted by the Federal government. However, the Board believes that it is

within its authority to adopt limited regulations, if warranted, to protect traditional zoning objectives.

The Town Board is further aware that cellular telephone transmissions are an important form of communication and is adopting this moratorium for a limited period so as to avoid, to the greatest extent possible, interference with the plans of providers of cellular telephone service.

3) This Local Law shall apply to all properties within the Town of Eastchester.

4) Scope of Controls

A. During the effective period of this law:

1) The Planning Board shall not grant any preliminary or final approval to a subdivision plat, site plan, special permit or wetlands permit which would have as a result the erection of a cellular telephone antenna.

2) The Zoning Board of Appeals shall not grant any variance or special permit for any use which would result in the erection of a cellular telephone antenna.

3) The Building Inspector shall not issue any permit which would result in the erection of a cellular telephone antenna.

B. The foregoing restrictions shall not apply to the following:

1) Certificates of Occupancy for any and all construction made pursuant to Building Permits issued prior to the effective date of this Local Law.

C. The Town Board reserves the right to direct the Building Inspector to revoke or rescind any Building Permits or Certificates of Occupancy issued in violation of this Local Law.

**5. No consideration of new applications**

No applications for construction affected by this Local Law or for approvals for site plan, subdivision, variance, wetlands permit, or special permit shall be considered by any board or agency of the Town of Eastchester while this Local Law is in effect. Nothing in this Local Law shall preclude an applicant for such proposed construction from having a maximum of two informal conferences with an appropriate board or agency while this Local Law is in effect.

**6. Term**

This Local Law shall be in effect for a period of 90 days from its effective date.

**7. Penalties**

Any person, firm or corporation that shall construct, erect, enlarge or alter any cellular telephone antenna in violation of the provisions of this Local Law or shall otherwise violate any of the provisions of this Local Law shall be subject to:

- A. Such penalties as may otherwise be provided by the laws, rules and regulations of the Town of Eastchester for violations; and
- B. Injunctive relief in favor of the Town of Eastchester to cease any and all such actions which conflict with this Local Law and, if necessary, to remove any construction which may have taken place in violation of this Local Law.

**8. Validity**

The invalidity of any provision of this Local Law shall not effect the validity of any other provision of this Local Law which can be given effect without such invalid provision.

**9. Superseding other laws**

- A. All laws, ordinances, rules and regulations of

the Town of Eastchester are hereby modified and superseded by this Local Law with respect to their application to the subject matter of this Local Law for the 90-day term of this Local Law.

- B. This Local Law shall modify and supersede with respect to its application and for the term of this Local Law the following provisions of the Town Law of the State of New York: Sections 267-a, 267-b, 274-a, 274-b, 276 and 277.

#### 210 Hardship

- A. Should any owner of property affected by this Local Law suffer an unnecessary hardship in the way of carrying out the strict letter of this Local Law then the owner of said property may apply to the Town Board in writing for a variation from strict compliance with this Local Law upon submission of proof of such unnecessary hardship. For the purposes of this Local Law unnecessary hardship shall not be the mere delay in being permitted to make an application for a variance, special permit, site plan, wetlands permit, or subdivision during the pendency of this Local Law.

#### B. Procedure

Upon submission of a written application to the Town Clerk by the property owner seeking a variation of this Local Law, the Town Board shall within thirty (30) days of receipt of said application schedule a Public Hearing on said application upon five (5) days written notice in the Official Newspaper of the Town. At said Public Hearing the property owner and any other parties wishing to present evidence with regard to the application shall have an opportunity to be heard, and the Town Board shall within fifteen (15) days of the close of said Public Hearing render its decision either granting or denying the application for a variation from the strict requirements of this Local Law. If the Town Board determines that a property owner will suffer an unnecessary

hardship if this Local Law is strictly applied to a particular property, then the Town Board shall vary the application of this Local Law to the minimum extent necessary to provide the property owner relief from strict compliance with this Local Law.

- C. Any party aggrieved by the determination of the Town Board on an application for a variation from the strict compliance with this Local Law may appeal said decision to the Supreme Court, State of New York, Westchester County, pursuant to Article 78 of the Civil Practice Laws and Rules within thirty (30) days of the filing of said decision in the Office of the Town Clerk.

11. Effective Date

This Local Law shall take effect immediately.

Dated:

## **EXHIBIT 5**



# TARRYTOWN-ON-HUDSON

21 Wildey Street • Tarrytown, New York 10591-3199

*Mayor*  
EILEEN HILLA  
*Deputy Mayor*  
LOUIS AGRO, JR.

*Trustees*  
THOMAS T. BASHER  
JEROME W. BLOOD  
ROBERT G. LUSTYIK, SR.  
RAYMOND E. MCGOVERN, JR.  
DONALD H. WHITELY


October 4, 1994

*Village Administrator*  
MICHAEL S. BLAU  
914-631-1885  
*Village Treasurer*  
GERALD J. BARBELET  
914-631-1106  
*Village Clerk*  
LOUISE CAMILLIERE  
914-631-1652  
*Building Inspector*  
RICHARD STEIN  
914-631-3668  
*Supt. of Public Works*  
BENEDICT SALANITRO, P.E.  
914-631-0356  
Fax No: 914-631-1125

STATE OF NEW YORK  
COUNTY OF WESTCHESTER ss:  
VILLAGE OF TARRYTOWN

I, LOUISE E. CAMILLIERE, Village Clerk of the Village of Tarrytown, New York, do hereby certify that the attached Local Law No. 10 of the Year 1994 is a true and exact copy of the said local law as adopted by the Board of Trustees on October 3, 1994, which was entered in the minutes of the Village of Tarrytown Board of Trustees meeting on October 3, 1994, and which is on file in the Office of the Village Clerk.

IN WITNESS WHEREOF, I have hereunto set my hand and hereunto affixed the corporate seal of said Village of Tarrytown this 4th day of October 1994.

  
LOUISE E. CAMILLIERE  
VILLAGE CLERK  
VILLAGE OF TARRYTOWN, NEW YORK



NOTICE IS HEREBY GIVEN that at the regular meeting of the Board of Trustees held on Monday, October 3, 1994, in the Municipal Building, 21 Wildey Street, Tarrytown, New York, the following Local Law No. 10 of the Year 1994 was adopted after public hearing:

A LOCAL LAW TO AMEND the Code of the Village of Tarrytown by adding a new Chapter 213 to be entitled Temporary Moratorium on Installation of Antennas, which chapter provides for a period of review to determine effects on the residents of Tarrytown from the installation of antennas and an opportunity to amend the Zoning Code of the Village of Tarrytown to protect the health, safety and welfare of the residents upon such review.

#### SECTION 1. LEGISLATIVE INTENT AND FINDINGS OF FACT.

##### a. BACKGROUND

The Village of Tarrytown is concerned about the proliferation of transmitting and receiving antennas. Recently, the Zoning Board of Appeals of the Village of Tarrytown has been compelled, based on the health studies presented to it, to approve variances for the installation of cellular telephone antennas within the confines of the Village of Tarrytown. Despite numerous protestations by individuals within the Village, the scientific evidence presented indicated that the health concerns regarding such antennas were at the time insufficient to warrant denial of area variances. However, there is in the community a perception that exposure to such fields may adversely impact the health of individuals exposed to such emissions over the long term.

##### b. LEGISLATIVE FINDINGS OF FACT

The Board of Trustees of the Village of Tarrytown does hereby find that a review of the long-term scientific studies is necessary on the emissions of the electromagnetic frequency radio emissions from all types of antenna. The Board believes that appropriate measures must be taken for a reasonable interim period while the effects of the electromagnetic frequency radio emissions are studied by the Village of Tarrytown Board of Trustees. The Board of Trustees further finds that as a result of a review of long-term studies, amendment may be recommended to the Zoning Code regarding the placement and intensity of the use of antennas throughout the Village of Tarrytown.

##### c. LEGISLATIVE INTENT

Pursuant to the authority duly vested in it, it is the intention of the Board of Trustees of the Village of Tarrytown to protect the health, safety and welfare of the

citizens of the Village of Tarrytown and to preserve the intended objectives of the Zoning Code, does hereby adopt a temporary moratorium on the approval of any antenna installations within the confines of the Village of Tarrytown.

## SECTION 2. SCOPE OF CONTROLS

During the effective period of this law as provided herein, the Planning Board, Zoning Board of Appeals, Architectural Review Board, and Building Inspector shall not accept, or continue to review, or grant any subdivision plat, site plan, Certificate of Appropriateness, architectural approval, variance, or building permit which would have as a result the erection of any antenna in the Village of Tarrytown.

## SECTION 3. PENALTIES

Any person, firm, entity or corporation that shall violate any of the provisions of this local law shall be subject to penalties as otherwise provided by law or ordinance of the Village of Tarrytown for violation of the provisions of a local law and shall be subject to injunctive relief to remove any construction which may have taken place in violation of the Local Law.

## SECTION 4. APPLICATION

This law shall apply to all property within the Village of Tarrytown.

## SECTION 5. VALIDITY

The invalidity of any word, section, clause, paragraph, sentence, part or provision of this local law shall not effect the validity of any other part of this local law which can be given effect without such invalid part or parts.

## SECTION 6. SUPERSEDING OTHER LAWS

A. All ordinances or local laws or part thereof in conflict with the provisions of this local law are hereby suspended or superseded to the extent necessary to give this local law full force and effect during the effective period.

B. During the duration of this law, it shall supersede inconsistent provisions of the New York State Village Law: 7-706, 7-712, 7-718, 7-725, 7-725-a, 7-725-b, 7-728, 7-730.

SECTION 7. HARDSHIP

A. The Village shall have the power to vary or modify the application of any provision of Local Law upon its determination, in its absolute legislative discretion, that such variance from strict compliance with this Local Law the health, safety and general welfare of the Village and upon finding that the application of the provisions of this Local Law to a specific property will cause unnecessary hardship and that such hardship is unique to that specific property.

B. Upon receiving written application for such variance, the Board of Trustees shall hold a public meeting within thirty (30) days of the receipt of such application. Within fifteen (15) days of the close of the public hearing the Board shall render a written decision either granting or denying the application. If the Board of Trustees determines that the strict application of this Local Law creates unnecessary hardship to the particular property, then the Board of Trustees shall vary the application of this Local Law to the minimum extent necessary. The granting of an appeal for relief by the Village Board of Trustees shall authorize and permit the Planning Board, Zoning Board, Architectural Review Board and/or Building Inspector to accept, review and consider and otherwise act.

C. Pursuant to Article 78 of the Civil Practice Laws and Rules, any party aggrieved by the determination of the Board of Trustees on an application for a variance may appeal said decision to the Supreme Court, State of New York, within thirty (30) days of the filing of said decision in the Office of the Village Clerk.

SECTION 8. EFFECTIVE DATE

This local law shall take effect immediately, as provided by law, and shall remain in force until December 7, 1994, unless extended by local law adopted at the public hearing upon no less than ten (10) days notice published in the official newspaper of the Village of Tarrytown.

BY ORDER OF THE BOARD OF TRUSTEES  
OF THE VILLAGE OF TARRYTOWN

Louise Camilliere  
Village Clerk

Dated: October 4, 1994

## **EXHIBIT 6**

NOTICE IS HEREBY GIVEN that at a Special Meeting of the Board of Trustees of the Village of Tarrytown held on Wednesday, the 21st day of December, 1994, in the Municipal Building, 21 Wilsey Street, Tarrytown, New York 10591 at 8 p.m. the following amendment to Chapter 305 of the Code of the Village of Tarrytown adding a new section providing for the definition and regulation of Commercial Communication Devices was adopted after public hearing. A summary of the legislation follows the complete text of the legislation.

A LOCAL LAW TO AMEND the Code of the Village of Tarrytown, Chapter 305 thereof entitled Zoning, to add a new section providing for the regulation of Commercial Communication Devices and to define same.

Chapter 305 shall be amended as follows:

305-15.1. Commercial Communication Device

#### SECTION 1. LEGISLATIVE INTENT AND FINDINGS OF FACT

A. Legislative Findings of Fact. The Village of Tarrytown is concerned about the proliferation of Commercial Communication Device (hereinafter "CCD").

CCD emit Radio Frequency (RF) signals that are radiated through the air by means of an antenna. RF transmissions, with the exception of AM radio, require an unobstructed line-of-sight pathway between origin and reception. These RF transmissions emit Nonionizing Electromagnetic Radiation (NIER). It has been shown by scientific studies that the human body absorbs NIER. The amount of absorption is affected by several factors including orientation of the human body to the NIER source.

There have been no long-term studies of human exposures to specific RF frequencies that are associated with cellular telephone, television, AM radio and FM radio. Therefore, it is impossible at this time to prove that NIER is not a threat to human health over the long term. In view of these uncertainties regarding the nature and extent of effects associated with long-term exposure to NIER, it is impossible at this time to prove that a certain level of exposure over a long period of time will not have an effect on people within the Village of Tarrytown.

There is a perception of adverse health impact by many persons within the Village of Tarrytown that is shared by the Village Board of Trustees. The Village Board of Trustees anticipates more exposure of the general public to NIER because of the significant increase in applications to erect CCD. Persons within the Village of Tarrytown need an official framework by which they can be assured that CCD are

Page 2

regulated and assessments of the safety of such systems are made. Consistent with the Court of Appeals decision in Criscuola v. Power Authority of the State of New York, 81 N.Y. 2d 649 (1993), perception of a health risk from exposure to electromagnetic emissions is a valid basis to award damages in a case involving NIER and the Court held that there is no requirement to prove the reasonableness of the perception. It is therefore the position of the Board of Trustees that in order to protect the health, safety and welfare of the persons living and working in the Village of Tarrytown, the Village must protect against the perceived potential adverse health consequences until long-term studies resolve the issue.

The Federal Communication Commission (FCC) has jurisdiction over access to public airwaves. The FCC has not issued regulations on NIER nor does the FCC regulate antenna height, design, or location on a site except to require that antennas be located sufficiently above the terrain to permit unobstructed transmission of signals.

CCD mounted on towers or on the roofs of buildings throughout the Village can negatively impact the aesthetic nature of the community. The impact is severe where one building contains a significant number of CCD, or one neighborhood has a number of buildings where CCD are located.

The issue of whether the value of property, both residential and commercial, will be negatively impacted due to the erection of CCD because of the perceived public fear of a health risk is currently being litigated in the Courts. The Court of Appeals has already held it does not matter whether the perceived health risk is scientifically genuine or a verifiable fact. Criscuola v. Power Authority of the State of New York.

Therefore, the Board of Trustees, pursuant to its responsibility to protect the health, safety and welfare of persons within the Village of Tarrytown, hereby enacts this amendment to Chapter 305.

B. Legislative Intent. The Board of Trustees of the Village of Tarrytown is fully cognizant that pursuant to Cellular One Company v. Rosenberg, which cites as basis for the decision Matter of Consolidated Edison v. Hoffman, a standard of public necessity is the test established for the granting of zoning variances for public utilities. Entities that prove that they are a public utility are subject to this lesser standard for the granting of zoning use variances. The Board of Trustees acknowledges that CCD will be erected in the Village; however, the erection of the CCD

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must be subject to specific guidelines, as established by the Board of Trustees, taking into account both the needs of the community and the rights of the companies desiring to erect CCD in the Village.

## SECTION 2. ERECTION OF CCD

The maximum number of CCD to be erected in the Village of Tarrytown shall be based upon a fair share proportionate basis, to be calculated utilizing the number of square miles of the incorporated Village of Tarrytown (3.1 square miles) in comparison to the total number of square miles within Westchester County (450.5 square miles.) Based upon the square mile calculation, the fair share proportion of CCD that may as a maximum be erected in the Village of Tarrytown is .069% of the total number of CCD (erected and those that applications have been submitted to municipalities) in Westchester County at the time the application is submitted to erect a CCD in the Village of Tarrytown. The Board of Trustees shall maintain this local law, and the proportionate share calculation as the Law of the Village of Tarrytown in regard to the erection of CCD until a long term study of the health effects of CCD is completed and the results thereof prove definitely that there is no long term health risk from long term exposure to CCD.

B. No CCD shall be erected in any zoning district in the Village of Tarrytown that is within the line of sight of a resident, office worker or any other person in the Village and directed toward a resident, office worker or any other person in the Village that does not meet the performance standard in Section 5 hereof.

C. Applications to erect a CCD in the Village of Tarrytown shall include all of the information required pursuant to this Chapter. Applications shall be subject to, but not be limited to, the following reviews: Site Plan, Zoning Board of Appeals, Architectural Review Board, Building Permits, Environmental Reviews and all other related reviews. Any application that does not contain all of the information required pursuant to this Chapter shall be considered deficient and will not be reviewed.

- 1). Exact direction of maximum lobes and associated radiation.
- 2). Angle of CCD in relation to ground.
- 3). Map designating location of CCD and buildings that will be within 500 feet from the CCD in the direction of the signal.
- 4). Transmission and maximum effective radiated power.
- 5). Frequency, modulations and class or service.
- 6). Manufacture, type and model of the CCD.

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- 7). The height of the proposed CCD.
- 8). The name and address of the operator of the proposed CCD.

D. No CCD shall be installed, erected or constructed unless the plans therefor are approved by the Planning Board for Site Plan Approval, Zoning Board of Appeals for any required variance approval, Environmental Review, Building Permit, the Architectural Review Board, where the antennas are visible are visible from a public street and all other required reviews.

E. Additional Plan Requirements - All CCDs shall meet the following requirements:

1. That the distance between the CCD and any building (not including the building upon which a CCD is erected) must equal fifty (50) percent of the CCD (the height calculation shall include any building on which it is erected);
2. That the CCD will not unreasonably interfere with the view of or from any public park, natural scenic vista, historic building or district;
3. The number of CCD to be installed at a site by an applicant may not exceed the current minimum necessary to insure the adequacy of current service required by the FCC license held by that applicant. The applicant must prove the need for the additional CCD to insure the adequacy of current service. The applicant shall deposit into an escrow account a sufficient amount to be used solely by the Village of Tarrytown to retain a qualified expert to determine the accuracy of the information required to be submitted with the application as described in this Chapter;
4. That there exists no other CCD which can reasonably serve the needs of the owner of the proposed CCD;
5. That the color of the proposed CCD will be light tone, except to the extent required by law or by the Architectural Review Board;
6. That the radio, television, telephone or reception of similar signals for nearby properties will not be disturbed or diminished;
7. It shall be a condition of the approval that no additional and/or different CCD shall be installed at the site without application as described herein.

### SECTION 3. ANNUAL REVIEW.

- A. The exact direction of the signal, the angle of the CCD



and the NIER emissions shall be verified on an annual basis by owner's expert and it shall be reviewed by an expert licensed in the State of New York by the Village of Tarrytown.

B. Applicant shall deposit with the Village, on an annual basis, a sum sufficient to pay for the verification of the annual information required herein to be submitted. Any portion of the fee not used to pay for the retention of an expert by the Village of Tarrytown shall be refunded to the owner of the CCD.

C. Failure of applicant to provide the deposit to the Village for the purposes of verification within one (1) month of the date of request shall provide sufficient reason for the village to schedule a public hearing with at least fourteen (14) days notice to the owner of the CCD that the CCD be immediately disconnected because of a violation of the conditions imposed herein.

D. Should the verification prove that the CCD has been changed, altered or modified in relation to direction or angle or NIER emission, the Village shall demand that the CCD be immediately corrected to comply with the original approvals.

E. Should the verification prove that the CCD has been changed, altered or modified in relation to angle or NIER emission for two consecutive years, the Village shall demand that the CCD be immediately removed from the building or structure as a violation of the condition imposed herein after a duly scheduled public hearing with at least fourteen (14) days notice to the owner of the CCD.

SECTION 4. CONTINUED VIOLATION Each day that a violation of Section 305.15.1 continues shall be considered a separate offense.

#### SECTION 5. PERFORMANCE STANDARD

New CCD must comply with the following performance standard that the estimated NIER radiation from proposed CCD, when added to existing ambient levels, will not exceed the following amounts over time at various points on and near the proposed CCD:

A source of nonionizing electromagnetic radiation (NIER), when combined with existing sources of NIER, shall not expose the general public to ambient radiation exceeding the mean squared electric or magnetic field strength or an equivalent plane wave free-space power density averaged over 0.5 hour period as follows: